

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 18136 of 2002

Between:

T.Seshaiah, Staff No.575234 S/o.T.Subbanna
A.P.S.R.T.C., Dharmavaram Depot,
Ananthapur District

..... PETITIONER

AND

- 1 The Depot Manager, A.P.S.R.T.C., Ananthapur Depot,
Ananthapur District.
- 2 The Regional Manager,
A.P.S.R.T.C., Ananthapur District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the action of the Respondents in not regularising my services on par with my juniors as illegal, arbitrary and unreasonable by issuing appropriate Writ, order or direction, more particularly in the nature of Writ of Mandamus and consequently to direct the respondents to regularise my services from the date of his reinstatement.

Counsel for the Petitioners: MR.CHILAMKURI HANUMANTHA RAYUDU

Counsel for the Respondents: MR.P.VINAYAKA SWAMY, SC FOR APSRTC

The Court made the following:

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ORDER:

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This writ petition is filed to declare the action of the respondents in not regularizing the services of the petitioner, on par with his juniors, as illegal and arbitrary and consequently to direct them to regularize the services of the petitioner from the date of his reinstatement.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was appointed as a Casual Sweeper in the respondents-corporation on 19-11-1978. After some time, he was disengaged from service without prior notice, against which he preferred an industrial dispute in I.D.No.34 of 1992 before the Labour Court, Ananthapur. The labour Court passed an award dated 24-03-1994 directing the respondents to reinstate the petitioner into service. Against the said award, the respondents have filed W.P.No.1997 of 1995 and that was dismissed.

The grievance of the petitioner is that though he worked continuously for 240 days after his reinstatement on 02-05-1996, the respondents are not regularizing his services. Therefore, he approached the Assistant Commissioner of Labour, Ananthapur, before whom the respondents gave an undertaking that the services of the petitioner would be regularized, and on such undertaking, the Assistant Commissioner closed the matter on 30-11-2000. In spite of the same, the respondents have failed to comply with the undertaking given before the Assistant Commissioner.

The services of one H.Nizamuddin, who worked as a Casual Labourer from 17-02-1995 to 01-12-1997 at Gooty Depot, have been regularized on 01-12-1997 and since then he has been working as a regular employee, who is junior to the

petitioner. Even though the petitioner is senior to the said Nizamuddin, his case is not considered for regularization of services. Hence, the present writ petition.

A counter affidavit has been filed by the respondents stating that in view of the orders passed in I.D.No.34 of 1992, dated 24-03-1994, the petitioner was reinstated into service as a Sweeper with effect from 26-04-1996 and that the petitioner cannot compare his case with one H.Nizamuddin, who is working as Shramik, as the petitioner was reinstated as a Casual Sweeper afresh. Though the petitioner was offered the Conductor post to regularize his services, he expressed his unwillingness to work as conductor. Therefore, the services of the petitioner cannot be regularized.

The learned counsel appearing for the petitioner contended that though the petitioner was ordered to be reinstated as a Sweeper, by virtue of the orders passed by the Labour Court in I.D.No.34 of 1991, dated 24-03-1994, but the respondent-Corporation is extracting the work as a Shramik to him and therefore, he is entitled for regularization of his services as a Shramik on par with one H.Nizamuddin, who was appointed as a Casual Labourer, and hence, he prays to allow the writ petition.

On the other hand, the learned Standing counsel appearing for the respondents-Corporation contended that the case of the said Nizamuddin is entirely different, because he was appointed as a Shramik, and therefore his services have been regularized. He further contended that there is no post of Sweeper as such in the respondents-corporation and the respondents-Corporation also offered the post of Conductor to the petitioner so as to regularize his services, but he expressed his unwillingness to work as Conductor and therefore the question of regularization of his services as a Sweeper does not arise.

The factual matrix is not in dispute. In pursuance of the direction given by the Labour Court in I.D.No.34 of 1992, dated 24-03-1994, the petitioner was reinstated into service with effect from 26-09-1996 as a Sweeper. According to the petitioner, though he was reinstated as a Sweeper, but the work extracted by the respondents-Corporation as a Shramik and therefore, his services have to be regularized from the date of reinstatement. The petitioner claimed regularization on par with one H.Nizamuddin. But, the said Nizamuddin was appointed as a Shramik on regular basis on the recommendations of the Departmental selection committee. Even though there is no Sweeper post for the

purpose of regularization, but his services can be regularized in the post of Shramik in view of the Circular No.PD-8/2005, dated 14-03-2005 issued by the respondents-corporation, whereunder the relevant paragraph reads as follows:

“All the Appointing Authorities are, therefore, once again advised to follow the guidelines issued through the Notification 1st cited and confirm the employees who were appointed in time Scale of Pay and put in a regular service of 5 years and more (except work Inspector (Tech./Non-Tech) and Man Mazdoor) and whose probation is completed satisfactorily, immediately. The employees already confirmed in any of the posts need not be confirmed again.”

So, admittedly, the petitioner has completed 5 years of service as an employee in the respondents-corporation. Therefore, his services have to be regularized as a Shramik.

The contention of the learned counsel appearing for the respondents is that though petitioner was offered the post of Conductor, but he did not give his willingness to join as a Conductor so as to regularize his services. The same cannot be a ground for not regularizing the services of the petitioner in view of the fact that he has been working in the corporation for more than 5 years. The services of the petitioner have to be regularized even according to the Circular instructions issued by the respondents-corporation.

Hence, the respondents are directed to regularize the services of the petitioner as per the Circular No.PD-8/2005, dated 14-03-2005, issued by the respondents-corporation.

Accordingly, the writ petition is allowed. No order as to costs.

JUSTICE K.C.BHANU

Dated July 18, 2005.

YCR

Rule nisi is made absolute as above.

Witness the Hon'be Sri Bilal Nazki, the Acting Chief Justice on this

Monday, the Eighteenth day of July Two thousand and five.

ASSISTANT REGISTRAR

To

- 1 The Depot Manager, A.P.S.R.T.C., Ananthapur Depot,
Ananthapur District.
- 2 The Regional Manager, A.P.S.R.T.C.,Ananthapur District
3. 2 C.D. copies.